



April 13, 2009

VIA ECFS

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Suite TW-A325
Washington, D.C. 20554

**Re: GN Docket No. 09-40;
Comments of Sage Telecom, Inc.**

Dear Ms. Dortch:

Sage Telecom, Inc. ("Sage") files in the above-referenced docket its Comments filed with the National Telecommunications and Information Administration ("NTIA") and the Rural Utilities Service ("RUS") in Docket No. 090309298-9299-01. Should you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

A handwritten signature in blue ink that reads "Robert W. McCausland". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Robert W. McCausland
Vice President and Secretary
Sage Telecom, Inc.
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Attachment

cc: Competition Policy Div., Wireline Competition Bureau (CPDcopies@fcc.gov)
Spectrum & Competition Policy Div., Wireless Telecommunications Bureau
(WTBPolicy@fcc.gov)
Best Copy and Printing, Inc. (fcc@bcpiweb.com)

**Before the
National Telecommunications and Information Administration
And
Rural Utilities Service
Washington, DC**

In the Matter of)	
)	
American Recovery and Reinvestment Act of 2009)	Docket No. 090309298-9299-01
Broadband Initiatives)	
)	

**COMMENTS OF SAGE TELECOM, INC. IN RESPONSE
TO JOINT REQUEST FOR INFORMATION**

Sage Telecom, Inc. ("Sage") submits these comments in response to Question 13.C. of the Joint Request for Information ("RFI") issued by the National Telecommunications and Information Administration ("NTIA") and the Rural Utilities Service ("RUS") with respect to the American Recovery and Reinvestment Act of 2009 (the "Recovery Act") Broadband Initiatives.¹ Sage recommends, as described herein, that NTIA and RUS adopt a nondiscrimination and network interconnection obligation that requires award recipients to allow any competitive provider to have access to the broadband network on an unbundled basis at just, reasonable and non-discriminatory rates, terms and conditions.

Sage is a competitive local exchange carrier ("CLEC") based in Texas that serves over 200,000 customers in thirteen states. Sage is strongly focused on residential and rural and suburban customers. Almost 98% of Sage's customers are residential consumers, and over 80% are located outside of urban areas. Because of its focus on residential consumers in rural and suburban areas, Sage's customers tend to be heavy users of dial-up Internet access, and nearly half of Sage customers' local usage involves connecting to dial-up ISPs. Sage currently provides

¹ See Federal Register, Vol. 74, No. 47, p. 10716 (Mar. 12, 2009).

service via wholesale local service agreements and is likely to remain dependent on incumbent local exchange carrier (“ILEC”) wholesale services in all existing Sage markets.

The Recovery Act articulates broadband goals that include (1) deploying broadband facilities into rural areas as well as unserved and underserved areas² and (2) fostering competition by improving access and providing consumers with a choice of providers.³ Many competing providers currently find building a network to be cost-prohibitive and are unable to obtain access to existing broadband facilities because providers often have no obligation to provide competing providers with access.⁴ Recovery Act funding offers a means to deploy broadband facilities into areas that are rural, underserved and/or unserved where it generally has not been economically feasible to do so. Deploying broadband facilities where they have not previously been offered will not, in itself, be sufficient to meet the goal of the Recovery Act to offer customers a choice of providers. Given the pro-competitive objectives of the Recovery Act, NTIA and RUS should require any award recipient to provide competing providers with meaningful access to the broadband networks that they deploy, particularly to those broadband networks constructed with Recovery Act funds.

² Pub. L. 111-5 (requiring RUS funding to be allocated to projects where at least 75 percent of the area to be served is rural). *See also*, Pub. L. 111-5, Section 6001(b)(1), (2) (listing NTIA program purposes as providing access to unserved and underserved areas).

³ Pub. L. 111-5 (stating a priority for a RUS project that delivers a choice of more than one service provider and tasking NTIA with improving access in underserved areas).

⁴ *See e.g.*, *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 USC §160(c)*; *SBC Communications Inc.’s Petition for Forbearance Under 47 USC §160(c)*; *Qwest Communications International Inc. Petition for Forbearance Under 47 USC §160(c)*; *BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 USC §160(c)*, Memorandum Opinion and Order, WC Docket Nos. 01-338, 03-235, 03-260, 04-48, 19 FCC Rcd 21496 (2004), *aff’d sub nom. Earthlink, Inc. v. FCC*, 462 F3d 1 (DC Cir 2006) (forbearing from requiring unbundled access for fiber to the premises facilities).

The Recovery Act also requires compliance with the FCC's Broadband Policy Statement, which sets forth principles to ensure interconnection of consumer devices and non-discriminatory access for applications operating over broadband facilities.⁵ Compliance with the FCC's Broadband Policy Statement is important, but it does not adequately address access by competing providers which, in turn, affects consumer choice. Taxpayer funds will be primarily used to construct broadband networks,⁶ and award recipients should be obligated to provide the utmost benefits to all taxpayers. Not only is broadband deployment in the public interest, but so too is a commitment to ensure that broadband networks are "widely deployed, open, affordable, and accessible."⁷ Adopting a condition to allow competing providers to obtain access to those broadband networks built with taxpayer funds will resolve the limited scope of the FCC's Broadband Policy Statement and will potentially generate additional jobs, as well as benefits for consumers, such as lower prices.

NTIA and RUS should promote competition by imposing a condition on award recipients to allow competing providers to obtain access to broadband networks on an ongoing basis, and NTIA and RUS should monitor and enforce such condition. Competition provides incentives to invest and innovate in new technologies and services that benefit consumers through increased

⁵ Pub. L. 111-5, Section 6001(j) (requiring, at a minimum, compliance with the FCC Broadband Policy Statement). *See also*, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Policy Statement, 20 FCC Rcd 14986 (2005) ("Broadband Policy Statement").

⁶ *Id.*, Section 6001(f) (limiting the Federal share of any NTIA project to 80%).

⁷ *See e.g.*, *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, ¶ 143 (2005) (finding that Verizon's commitment to offer comply with the FCC's Broadband Policy Statement as a condition of its merger with MCI to be in the public interest); *see also* *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290 ¶ 144 (2005) (same); and *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, fn. 339 (2007) (same).

choices and lower prices.⁸ Such a condition will promote competition not only for broadband services but also for telephone services. Many providers currently provision bundled telephone and Internet services over the same facilities. As a result, if there is only one broadband provider in an area and that provider is not required to provide unbundled access to its facilities, the benefits that competition brings to consumers will be lost for telephone services as well as for broadband services.

NTIA and RUS should require award recipients to agree, as a condition to receiving funds, to allow any competitive provider to have access to the broadband network on an unbundled basis at just, reasonable and non-discriminatory rates, terms and conditions. This obligation would require award recipients to provide unbundled access at a wholesale rate in a manner that allows competing providers to provision broadband service to end users. Also, the condition would apply whether or not access would otherwise be mandated by 47 U.S.C. § 251(c)(3). Any entity that does not want to abide by the conditions of the NTIA or RUS funding programs may choose not to participate.

To determine the appropriate wholesale rate for unbundled access to broadband networks constructed with Recovery Act funds, NTIA and RUS (and/or the FCC) might set a national rate based on a national retail price midpoint for each transmission speed minus a fixed-percentage discount that reflects not only costs that are avoided when another provider assumes retail functions, but also the fact that the recipient's capital costs will largely be funded by the taxpayer. The rate should also take into account the increased costs of serving areas that are currently unserved or underserved, and should encourage deployment by providing recipients an

⁸ See e.g., *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, ¶ 5 (1999).

incentive to undertake the effort of construction. The taxpayer funds used to construct the network will obtain a "bigger bang for the buck" if a reasonable wholesale rate is established that stimulates competition at the retail level, thereby driving down retail prices. Using such an approach will increase the likelihood that the benefits of the subsidy provided by the taxpayers will flow through to the consumer, rather than ending up in the pockets of a taxpayer-enfranchised monopolist.

Adoption of Sage's proposed nondiscrimination and network interconnection obligation will help to generate jobs within the competitive telephone and broadband industry and will advance the competition goals of the Recovery Act. In addition, imposing such a requirement as a condition of receipt of funds would, with proper monitoring and enforcement, promote the public interest by ensuring that taxpayer funds are used to provide the maximum benefits to all taxpayers.

Respectfully submitted,



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